

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

November 1, 2017

The meeting was called to order at 6:01 p.m. by Scott Spendlove at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Sandy Naegle, Scott Spendlove, and William Whetstone

ABSENT

Necia Christensen

WEST VALLEY CITY PLANNING DIVISION STAFF

Jody Knapp and Brenda Turnblom

WEST VALLEY CITY LEGAL DEPARTMENT

Brandon Hill

AUDIENCE

11 people were in the audience.

B-7-2017
Erickson – Non-Conforming Use Determination
3860 South 3600 West
R-1-8 Zone

REQUEST:

John and Jennifer Erickson have submitted an application with the West Valley City Board of Adjustment requesting a non-conforming use determination for two existing dwellings on the same parcel located at 3860 South 3600 West in the R-1-8 zone. The West Valley City General Plan recommends low density residential land uses.

BACKGROUND:

- The subject property is not part of a formal subdivision. The parcel number 15-32-329-021. The property is zoned R-1-8 and is approximately .67 acres in size. The primary home is addressed as 3860 South 3600 West and the second dwelling is addressed as 3854 South 3600 West.
- According to Salt Lake County records, the primary dwelling at 3860 South was constructed in 1912. The structure at 3854 South was originally constructed in 1922. The early assessment cards list the structure at 3854 South as a hatchery. It was then labeled a cellar from 1958 - 1969.
- The current County assessment card lists the second dwelling as a STORAGE_SHED but then also notes BSMT RES. The structure does have a separate water/sewer meter as well as gas meter but shares electric with the primary dwelling.
- At the time both structures were constructed, zoning did not exist in this part of the County. Zoning first appeared in 1965 and the area was zoned A-1, which did allow for two-family dwellings. Subsequent zoning maps indicate that zoning was in place until approximately 1985 when the zoning was changed to R-1-8 as part of a larger area re-zone.
- In 2008, a complaint was filed with the Building Department regarding the living conditions at 3854 South. Several violations were cited but the corrections were made and a Notice of Compliance was issued on March 11, 2008 indicating that 3854 South 3600 West can be used as a dwelling.
- The applicant purchased this property in 2008 and a rental license was issued in 2010 for the unit at 3854 South 3600 West.

To help the Board in its determination of this case the applicant has provided photographs of the unit at 3854 South and two written affidavits from long-time residents citing their recollection of the continuous use of this property and the two dwelling units.

To conclude, the applicant has submitted a request for the Board to determine whether the two existing dwellings are legal, and have been continuously used as living space and can remain as constructed.

ORDINANCE SUMMARY:

Section 7-12-106 of the West Valley City code reads:

7-12-106. NONCONFORMING USE OF BUILDINGS, STRUCTURES, AND LAND – STANDARD OF REVIEW. The following provisions govern the establishment, restoration, reconstruction, extension, Alteration, expansion, and substitution of Nonconforming Uses, Buildings, and Structures:

(1) There is no presumption of legal existence of Nonconforming Uses. Individuals or entities asserting the establishment or legal existence of a Nonconforming Use shall have the burden to prove that the Nonconforming Use has been legally established and maintained. Uses, Buildings, or Structures in violation of current City ordinances shall be presumed to be illegal unless a Nonconforming Use, Building, or Structure determination is obtained as set forth in this Chapter.

(2) Applicants for a Nonconforming Use or individuals or entities asserting the existence of a Nonconforming Use, Building, or Structure shall submit an application to the Board of Adjustment including all of the following:

- a. The exact nature of the Nonconforming Use, Building, or Structure asserted;
- b. The beginning date of the Nonconforming Use, Building, or Structure; and c. Any and all evidence establishing that the Nonconforming Use, Building, or Structure continually and legally existed from the time referenced in subsection 1(b) above to the date of the application.
 - i. Evidence establishing the Nonconforming Use, Building, or Structure includes witness testimony, affidavits, correspondence, official permits or licenses, and other evidence proving the establishment and continuance of the Nonconforming Use, Building, or Structure.
 - ii. No evidence or witnesses not included or listed in the application shall be presented by the Applicant.

(3) The Applicant shall have the burden of proving by clear and convincing evidence that the Nonconforming Use, Building, or Structure legally existed before its current land use designation, has been maintained continuously since the time the land use ordinance governing the land changed, and because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the Use of the land.

(4) In order to prove that the Use, Building, or Structure legally existed before its current land use designation, the Applicant must prove by clear and convincing evidence that the Use, Building, or Structure complied with all applicable legal requirements as of the asserted date of establishment, including but not limited to the acquisition of all required permits, business licenses, and other authorizations.

(5) In order to prove that the Use, Building, or Structure has been maintained continuously since the time the land use ordinance governing the land changed, the Applicant must prove by clear and convincing evidence that the Use, Building, or Structure has not been abandoned, that the Use has not paused or terminated for any one year period between the asserted date of commencement and the date of application, and that all legal requirements have been continually met, including but not limited to the acquisition and renewal of all required permits, business licenses, and other authorizations.

Applicants:

John and Jennifer Erickson
3860 South 3600 West
West Valley City, UT 84119

Discussion: Scott Spendlove noticed that the electrical system is shared between the two dwellings on the property. Brandon Hill said he does not see that as a legal concern. Typically, separate dwellings have separate electrical systems, however, back in 2008 our building inspector examined the electrical system and was satisfied.

Scott Spendlove asked if homeowners must obtain a business license to rent out a property. Jody Knapp answered yes, John and Jennifer Erickson live in the main home, and they rent out the second dwelling. The property was purchased in 2008 and they applied for a business license in 2010.

Jody Knapp reported that we received a telephone call from Necia Christensen. She said she personally knows Ethan Woodbury and stands behind anything he says in the statement he submitted.

William Whetstone asked if the decision that is made at this hearing will run with the land. Brandon Hill answered yes.

Public Comment: John Erickson presented an additional declaration from Helen Reese that establishes continuous residential use of the second dwelling since 1978.

The applicant provided tax assessments from the 1940's-1960's regarding the second dwelling. Scott Spendlove asked City staff if a tax assessment would be different for a tack house or a sub-structure than it would be for the main residential unit. Jody Knapp said when the home was first built, there were a lot of agricultural structures on the property that were listed on the first assessment. The current assessment lists the structure as a storage shed, but under the description it says it is a basement residence. Scott Spendlove said there is a lot of information presented, but he does not know if one tax rate is applicable to all structures on the property. Jody Knapp said the Board of Adjustment can make a decision based on the declarations that have been submitted.

For the purpose of determining continual use, Scott Spendlove said the rezone of 1985 is the start date for keeping track of whether the second dwelling was used as a rental property. Brandon Hill verified that is correct.

For the record, Scott Spendlove said he went to school with a John Woodbury, one of the declarants siting continuous rental us of the second dwelling. Scott Spendlove does not think that knowing John Woodbury will affect this process.

John Erickson said he purchased the property in 2008. There were tenants renting out the second dwelling when he purchased it. He received a notice of violation from Code Enforcement, which he thinks is residual from the prior owner. That is what prompted him to get a rental license.

Scott Spendlove said the declaration of Ethan Woodbury establishes that the residential dwelling started sometime between 1924 and 1941, at which time he said John and Joy Woodbury lived there. The declaration from Helen Reese establishes that between 1978 to the present day, the structure at 3854 South 3600 West has been continuously used as a residential dwelling. We also have a more recent document advertising the rental property.

William Whetstone said he drove past the property and noticed a new building behind the basement structure and asked what it is. John Erickson said it is a detached garage. William Whetstone asked if the detached garage will serve both residences. John Erickson said it currently serves one residence.

Having no further discussion, the public portion of the meeting was closed.

Motion: William Whetstone moved to approve B-7-2017.

Sandy Naegle seconded the motion.

Discussion: Sandy Naegle said the documentation provided by the applicant clearly indicates the property located at 3854 South 3600 West was used as a rental. The declarations are the only way to determine that it was a rental property. We have no information to indicate otherwise. William Whetstone said the declaration from Helen Reese presented today is the most significant.

Scott Spendlove noted that a number of properties in the Granger area began as basement houses. As families became more established, a second, above ground level was added above of the basement.

A roll call vote was taken:

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|-------------------|-----|
| Sandy Naegle | Yes |
| Scott Spendlove | Yes |
| William Whetstone | Yes |

Motion Carries – B-7-2017 Approved – Unanimous

OTHER

Approval of Minutes from October 4, 2017 **Approved**

Scott Spendlove asked City staff to elect a co-chair before we have any additional BOA cases. 2009 was the last time the BOA had a refresher course, when we have a new BOA member it would be good to review.

There being no further business, the meeting adjourned at 6:30 p.m.

Brenda Turnblom, Administrative Assistant